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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Jon Stainbrook
1758 Meadowlark Rd.
Toledo, OH 43614

Plaintiff

vs.

Lions Gate Entertainment
2700 Colorado Blvd.
Santa Monica, CA 90404
310-449-9200

and

Palm Pictures
601 West 26th St., 11th floor
New York, NY 10001
212-320-3600

Defendants

Case No. 3:06CV2898

Judge: JUDGE DAVID A. KATZ

COMPLAINT WITH REQUEST FOR INJUNCTIVE RELIEF AND JURY DEMAND ENDORSED HEREON

Jon Stainbrook, *pro se*
1758 Meadowlark Rd.
Toledo, OH 43614
Phone No: (419) 514-1509
Pro se

Plaintiff Jon Stainbrook, pro se, for his Complaint herein alleges upon knowledge and otherwise upon information and belief, as follows:

NATURE OF THE CASE

1. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq., and for the related claim of Misappropriation. Plaintiff seeks permanent injunctive relief, damages, attorneys' fees, and costs.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. 1331, 1338(a), and 1338(b), and under its supplemental jurisdiction.

3. Venue is proper in the United States District Court for the Northern District of Ohio, Western Division under 28 U.S.C. §1391(b)(2).

4. This Court may exercise personal jurisdiction over the defendants as he has purposefully availed himself of the privilege of acting in the state of Ohio, his acts have caused consequences in this state, and the cause of action asserted herein arises from the defendants' activities.

PARTIES

5. Plaintiff, Jon Stainbrook is an individual residing at 1758 Meadowlark Ave. Toledo, OH 43614.

6. Defendant Lions Gate Entertainment is located at 2700 Colorado Blvd. Santa Monica, CA 90404.

7. Defendant Palm Pictures is located at 601 West 26th St., 11th floor New York, NY 10001.

FACTS

8. The song "Flashing Reds" contains material wholly original with the Plaintiff that is copyrightable subject matter under the laws of the United States. See attached Exhibit A.

9. At no time did the Plaintiff transfer ownership of or license in writing any part of his copyright in "Flashing Reds" to Defendants.

10. Plaintiff is currently and at all relevant times has been the sole proprietor of all right, title, and interest in and to the copyright in the music and music to the song "Flashing Reds".

11. Defendants did not request permission from Plaintiff to use "Flashing Reds" in their film "Stoked".

12. Plaintiff was not informed that Defendants used "Flashing Reds" in the Stoked movie .

13. Defendants did not credit Plaintiff for his song "Flashing Reds" in the Stoked

movie.

FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT
(17 U.S.C. §§ 101 et seq.)

14. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 14, inclusive, and incorporates them by this reference herein.

15. Defendants have copied Plaintiff's music to create derivative works which are substantially similar to the original work.

16. Defendants knowingly and willfully directly copied music to "Flashing Reds" in its entirety and then created derivative works therefrom.

17. Plaintiff is informed and believes, and on that basis alleges, that Defendants have been reproducing, creating derivative works, publishing, using, distributing, promoting or offering for sale illegal and unauthorized copies of the music to "Flashing Reds" throughout the United States.

18. The natural, probable and foreseeable result of Defendants wrongful conduct have been and will continue to be to deprive Plaintiff of the benefits of selling the music to others, to deprive Plaintiff of goodwill and the right to attribution for his work, and to injure Plaintiff's relations with prospective customers. Plaintiff has already suffered irreparable damage and has sustained lost potential profits and business opportunities. Plaintiff is informed and believes, and on that basis alleges, that she has lost and will continue to lose substantial revenues from the sale or licensing of the music for "Flashing Reds" and will sustain damage as a result of Defendants' wrongful conduct.

19. Defendants continue to willfully infringe Plaintiff's copyrights.

20. Plaintiff is informed and believes, and on that basis alleges, that unless enjoined by this Court, Defendants intend to continue their course of conduct and to willfully use, infringe upon, sell and otherwise profit from the music of "Flashing Reds" and works derived from the music. As a direct and proximate result of the acts of Defendants alleged above, Plaintiff has no adequate remedy at law to redress all of the injuries that Defendants have caused and intends to cause by their conduct. Plaintiff will continue to suffer irreparable damage and sustain lost profits until Defendant's actions alleged above

are enjoined by this Court.

21. Plaintiff is further entitled to recover from Defendants the actual damages suffered by his as a result of the infringements, including but not limited to any profits of the infringer that are attributable to the infringement including and any gains, profits and advantages obtained by Defendant's as a result of their acts of infringement alleged above and attorneys' fees. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

22. Alternatively Plaintiff is entitled to recover from Defendants statutory damages of $150,000.00 per infringement, along with attorneys' fees and costs of this action.

SECOND CLAIM FOR RELIEF

UNJUST ENRICHMENT

23. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 29, inclusive, and incorporates them by this reference herein.

24. Defendants have been unjustly enriched by its copying and use of the music to "Flashing Reds".

25. Defendants used Plaintiff's music to create a musical performance for a cost far less than he could have without them.

26. Defendants had knowledge of this benefit and used Plaintiff's music to create a derivative work for his own benefit.

27. Defendants' retention and use of the music to "Flashing Reds" is unjust without payment to the Plaintiff.

28. Defendants' actions were done with malice or reckless disregard of the Plaintiff's rights.

29. As a direct and proximate result of the acts of Defendants alleged above, Plaintiff is further entitled to recover from Defendants the actual damages suffered by this as a result of Defendants' actions and punitive damages in sufficient amount to deter Defendants from replicating its egregious conduct, along with attorneys' fees and costs of this action.

30. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff but will be proven at trial.

31. Plaintiff has no adequate remedy at law to redress all of the injuries that Defendants have caused and intends to cause by its conduct. Plaintiff will continue to suffer irreparable damage and sustain lost profits until Defendants' actions alleged above are enjoined by this Court.

32. Plaintiff is further entitled to disgorge Defendants of all revenues obtained during the infringing period or as a direct result of its unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. That Defendants be found to have infringed Plaintiff's copyrights in the music to the "Flashing Reds" work.
2. That Defendants' actions be found to inflict irreparable harm upon Plaintiff.
3. That Defendants, his agents, servants, employees, co-infringers, and all other persons in active concert or privity or in participation with him, be preliminarily and permanently enjoined from directly or indirectly infringing Plaintiff's copyrights in the music to "Flashing Reds" or continuing to use, market, offer, sell, dispose of, license, lease, transfer, display, advertise, reproduce, develop or manufacture any works derived or copied from the music to "Flashing Reds" or to participate or assist in any such activity.
4. That Defendants, his agents, servants, employees, co-infringers, and all other persons in active concert or privity or in participation with him, be enjoined to return to Plaintiff any and all originals, derivative works, copies, facsimiles, or duplicates of the music to "Flashing Reds" in their possession, custody or control and that such works or copies be destroyed.
5. That Defendants, his agents, servants, employees, co-infringers, employees, and all other persons in active concert or privity or in participation with him, be enjoined to recall from all distributors, wholesalers, jobbers, dealers, retailers, and distributors, and all others known to Defendants, any originals, derivative works, copies, facsimiles, or duplicates of any works shown by the evidence to infringe any copyright in the music to "Flashing Reds".

6. That Defendants be enjoined to deliver upon oath, to be impounded during the pendency of this action and destroyed pursuant to judgment herein, all originals, derivative works, copies, facsimiles, or duplicates of any work shown by the evidence to infringe any copyright in the music to "Flashing Reds".
7. That Defendants be required to file with the Court and to serve on Plaintiff, within 30 days after service of the Court's order as herein prayed, a report in writing under oath setting forth in detail the manner and form in which Defendants has complied with the Court's order.
8. That judgment be entered for Plaintiff and against Defendants for Plaintiff's actual damages according to proof, and for any profits attributable to infringements of Plaintiff's copyrights, in accordance with proof.
9. Alternatively that judgment be entered for Plaintiff and against Defendants for statutory damages of $150,000.00 per infringement based upon Defendants' willful acts of infringement, pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.
10. That Defendants be required to account for all gains, profits, and advantages derived from its acts of infringement and for his other violations of law.
11. That Plaintiff recover, as a result of Defendants' unjust enrichment, an amount to compensate his for his actual damages, any unlawful gains to Defendants, unlawful profits received by Defendants, lost profits of the Plaintiff, and recovery for any other unfair advantages retained by Defendants or suffered by Plaintiff.
12. That Plaintiff recover, as a result of Defendants' malice punitive damages in sufficient amount to deter Defendants from replicating its egregious conduct.
13. That Plaintiff be entitled to disgorge Defendants of all revenues obtained during the infringing period, as a direct result of its unjust enrichment or misappropriation.
14. That all gains, profits, and advantages derived by Defendants from its acts of infringement and other violations of law be deemed to be in constructive trust for the benefit of Plaintiff.
15. That Plaintiff has judgment against Defendants for Plaintiff's costs and attorneys'

fees.

16. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

DATED: December 1, 2006

Respectfully Submitted,

Jon Stainbrook, pro se
Email: jcstain@aol.com
1758 Meadowlark
Toledo, OH 43614
Tel: (419) 514-1509

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues triable to a jury.

DATED: December 1, 2006

Jon Stainbrook, pro se